

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

SUNNY ISLE SHOPPING CENTER, INC.,

Plaintiff,

v.

XTRA SUPER FOOD CENTERS, INC.,
d/b/a PUEBLO and KMART CORP.,

Defendants

CIVIL NO. 1998/154-M/R

TO: A. Jeffrey Weiss, Esq. - Fax 777-3019
John K. Dema, Esq.
John Zebedee, Esq.
Andrew C. Simpson, Esq.

ORDER GRANTING PUEBLO'S MOTION FOR A PROTECTIVE ORDER

THIS MATTER came for consideration on Pueblo's Motion for Protective Order. Plaintiff filed opposition to the motion. No reply is required.

William Keon, the President of Pueblo testified as Pueblo's designated corporate witness [Fed. R. Civ. P. 30(b)(6)] on two occasions, April 5, 2002 and June 19, 2002 for a total of approximately fourteen (14) hours.¹ On July 1, 2002, Pueblo filed a supplemental response to interrogatory number 11 of Plaintiff's Second Interrogatories (Exhibit's E-F to Plaintiff's motion). The supplemental response consisted of a reference to testimony of William J. Moreland, Regional Director of Real

1. As posited by Pueblo and not contradicted by Plaintiff.

Estate for Kmart, which testimony was given in *Sunshine Shopping Center, Inc. v. Kmart Corp.*, STX Civ. 1998/96 on March 6, 2000.

On July 15, 2002, Plaintiff filed a notice of 30(b)(6) deposition of Mr. Keon scheduled on July 26, 2002. Plaintiff seeks such deposition to clarify Pueblo's supplemental response to interrogatory number 11. Plaintiff asserts that such supplementation sought to change Pueblo's May 23, 2002 sworn response to that interrogatory. In response to such Notice of deposition, Pueblo filed this Motion for Protective Order.

Fed. R. Civ. P. 30(a)(2) provides that leave of court is required to depose someone a second time and that leave shall be granted subject to the principles in Rule 26(b)(2). This has been held applicable to corporate depositions noticed pursuant to Rule 30(b)(6). *Ameristar Jet Charter, Inc. v. Signal Composites, Inc.* 244 F.3d 189, 192 (1st Cir. 2001).

In this matter, Pueblo's supplementation consisted only of referenced testimony of another person not employed by Pueblo.² Upon consideration of all pleadings herein, the Court finds that there is little likely benefit to further examination of Keon in such regard and that the burden of a third deposition outweighs any likely benefit therefrom.

2. Pueblo's supplemental response states (only) that Moreland so testified. Keon's certification relates to such statement.

Accordingly, it is hereby;

ORDERED as follows:

1. Pueblo's motion is GRANTED and the Rule 30(b)(6) deposition of William Keon noticed by Plaintiff for July 26, 2002 shall not be held.
2. Plaintiff's request for fees and costs is DENIED.

ENTER:

DATED: July 24, 2002

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By: _____
Deputy Clerk